

From: Michael Utrilla, Esq. <utillaw@aol.com>
To: BUFExecAssistant <BUFExecAssistant@bop.gov>
Cc: joemurejr <joemurejr@aol.com>
Subject: Gerard Separta Inmate Register No. 85546-054
Date: Mon, Apr 6, 2020 6:38 pm
Attachments: JM LetterheadSCPARTA.pdf (67K), SCPARTIAEX.pdf (270K)

Dear Sir or Madam,

Please find enclosed an urgent request concerning the COVID-19 virus on behalf of Gerard Separta, one of your inmates at FCI Butner Medium.

Thank you for your prompt attention to this matter.

Best regards,

Michael Utrilla, Esq.
26 Court Street, Suite 2601
Brooklyn, New York 11242
Phone (718) 852-8400
Facsimile (718) 629-1359

We intend the information in this e-mail to reach the addressee exclusively. This e-mail may contain privileged or otherwise confidential information. It should not be copied or forwarded to unauthorized persons. If you receive this e-mail in error, please delete it without copying or forwarding it, and notify us by reply e-mail so we can correct our records.

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JOSEPH MURE JR & ASSOCIATES
26 Court Street • Suite 2601 • Brooklyn, NY 11242 • 718.852.9100

April 6, 2020

FCI Butner Medium I
Old NC Highway 75
Butner, North Carolina 27509
VIA EMAIL (BUF/ExecAssistant@bop.gov)
VIA FACSIMILE (919) 575-2091

RE: Gerard Scparta
Inmate Register No. 85546-054

Dear Sir or Madam,

Please be advised our offices represent the above referenced inmate.

Gerard Scparta is currently serving the remainder of his sentence at FCI Butner Medium I (“FCI Butner”) and is scheduled for release from BOP custody later this year on December 28, 2020. Consistent with 18 USC § 3624(c)(2), Mr. Scparta is scheduled for a transfer to a halfway house in the near future and then ultimately to a period of home confinement¹.

We write to request an emergency housing adjustment for purposes of allowing Mr. Scparta to serve the remainder of his sentence on home confinement in light of the significant risk of COVID – 19 infection including its recent spread within federal and state prison facilities.

As of April 6, 2020, the new strain of coronavirus which causes COVID-19 has infected over 1,309,439 people leading to at least 72,638 deaths worldwide with the United States now leading the world with 347,003 confirmed cases and 10,335 deaths².

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The CDC has now recommended that *"for the next 8 weeks, organizers cancel or postpone in-person events that consist of 50 people or more throughout the U.S."*¹⁰ With confirmed cases in North Carolina that indicate accelerating community spread, every necessary action to protect vulnerable individuals as well as the community at large must be taken. This mandates following the CDC's guidance that individuals at higher risk of contracting COVID-19 take immediate preventative actions including avoiding crowded areas and staying home as much as possible. This includes, without limitation, individuals with chronic medical conditions such as Gerard Scparta. As Mr. Scparta's physician has confirmed in the enclosed letter, he suffers from high blood pressure – a condition which we are advised necessitated the BOP's incorporation of two additional medications into his regimen in the last week.

It is axiomatic that conditions at FCI Butner create an ideal environment for the transmission of contagious disease¹¹. According to public health experts, incarcerated individuals *"are at special risk of infection, given their living situations,"* and *"may also be less able to participate in proactive measures to keep themselves safe"* making *"infection control challenging in these settings."*¹²

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Furthermore, “*coronavirus demonstrates high robustness and a strong capability to survive outside the body and can remain infectious for up to 60 minutes after aerosolization.*” Thus, the rapid spread of COVID-19 can result from fomites (objects or material that are likely to carry infections) such as food trays, bathroom taps and clothes¹⁵.

The conditions for residents of Butner create a grave risk of exposure to COVID-19 inasmuch as the FCI houses 651 residents in close proximity to others, another 279 housed nearby at the camp along with a corresponding number of staff members moving in and out of both facilities on a daily basis as well as back and forth into the local community.

At FCI Butner Mr. Scparta is necessarily compelled to have close proximity interactions with numerous residents as well as staff members on a daily basis, thereby increasing his risk of being infected or infecting others if he were to become infected. As with all BOP facilities, inmates are not provided access to alcohol-based hand sanitizer which is currently the most effective way to kill the virus and sanitize hands and surfaces.

It is for this reason that we request Mr. Scparta be allowed to serve the remainder of his sentence ending this year on home confinement. Home confinement promotes social distancing which is the primary means to save lives by reducing transmission of this deadly pathogen. By permitting Mr. Scparta to move to home confinement, the risk that he will get the virus from other inmates – as well as the risk that other inmates might get it from him - will be entirely eliminated.

It also bears emphasis that Mr. Scparta is a prime candidate for this type of placement change. The instant offense to which he plead guilty was his first and only offense in his life. Indeed, Scparta had been a decorated New York City Police Officer for over a decade. Of additional relevance, he subsequently participated in rescue, recovery and cleanup operations at the World Trade Center site throughout the month of September 2011.

Upon information and belief, Mr. Scparta has an unblemished record in prison. Prior to

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his current incarceration he spent over a year under the supervision of the Pretrial Services Department without incident.

We respectfully submit that the totality of these circumstances reflect Mr. Scparta's great level of respect and responsibility which militates in favor of the requested housing adjustment. Indeed, Mr. Scparta is willing to implement any additional measures deemed necessary to reassure the Bureau of Prisons of his whereabouts and compliance with the remainder of his sentence including wearing an ankle monitor at all times.

We believe that the requested relief represents an appropriate and humane approach to dealing with a pandemic and national emergency of this magnitude. In the absence of same, Mr. Scparta's remaining eight months of BOP custody – which would have necessarily included residency in a halfway house as well as a period home confinement – could potentially serve as death sentence given the existence of his chronic health ailment.

Thank you for your time and consideration of this matter.

Respectfully Submitted,
Joseph Mure, Jr.
Joseph Mure, Jr., Esq.



155 Crystal Run Road
Middletown, NY 10941

845-703-6999
www.crystalrunhealthcare.com

04/06/2020

To Whom It May Concern:

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If you require additional information please contact the office.

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Laura A. Nicoll MD

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JOSEPH MURE, JR**

Fax

To: FCI Butner Medium I

Fax: (919) 575-5023

From: Joseph Mure, Jr., Esq.

Date: April 6, 2020

RE: Gerard Scparta

Pages: 6

Inmate Register No. 85546-054

cc:

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BROOKLYN, NEW YORK 11242
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FACSIMILE (718) 629-1359

**THE LAW OFFICES OF
JOSEPH MURE, JR**

Fax

To: Elle Spear

Fax: (919) 575-5023

From: Joseph Mure, Jr., Esq.

Date: April 7, 2020

RE: Gerard Scparta

Pages: 6

Inmate Register No. 85546-054

cc:

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**PLEASE FEEL FREE TO CONTACT ME AT ANY TIME ON MY
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¹² Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States," (March 2, 2020), at <https://bit.ly/2W9V6oS>.

The current pandemic caused by the spread of COVID-19 gives rise to serious concerns for individuals with chronic medical conditions such as Mr. Scparta inasmuch as COVID-19 not only spreads “*between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes*”¹³ but also through talking or merely breathing¹⁴. Moreover, individuals who have contracted the virus may not show symptoms for 10-12 days yet remain contagious during that time – able to infect others with whom they interact. This asymptomatic transmission makes the COVID-19 virus particularly dangerous as its carriers are often unaware of their own infection.

Furthermore, “*coronavirus demonstrates high robustness and a strong capability to survive outside the body and can remain infectious for up to 60 minutes after aerosolization.*” Thus, the rapid spread of COVID-19 can result from fomites (objects or material that are likely to carry infections) such as food trays, bathroom taps and clothes¹⁵.

The conditions for residents of Butner create a grave risk of exposure to COVID-19 inasmuch as the FCI houses 651 residents in close proximity to others, another 279 housed nearby at the camp along with a corresponding number of staff members moving in and out of both facilities on a daily basis as well as back and forth into the local community.

At FCI Butner Mr. Scparta is necessarily compelled to have close proximity interactions with numerous residents as well as staff members on a daily basis, thereby increasing his risk of being infected or infecting others if he were to become infected. As with all BOP facilities, inmates are not provided access to alcohol-based hand sanitizer which is currently the most effective way to kill the virus and sanitize hands and surfaces.

It is for this reason that we request Mr. Scparta be allowed to serve the remainder of his sentence ending this year on home confinement. Home confinement promotes social distancing which is the primary means to save lives by reducing transmission of this deadly pathogen. By permitting Mr. Scparta to move to home confinement, the risk that he will get the virus from other inmates – as well as the risk that other inmates might get it from him - will be entirely eliminated.

It also bears emphasis that Mr. Scparta is a prime candidate for this type of placement change. The instant offense to which he plead guilty was his first and only offense in his life. Indeed, Scparta had been a decorated New York City Police Officer for over a decade. Of additional relevance, he subsequently participated in rescue, recovery and cleanup operations at the World Trade Center site throughout the month of September 2011.

Upon information and belief, Mr. Scparta has an unblemished record in prison. Prior to

¹³ Coronavirus disease 2019 (COVID-19) and you”, CDC (March 15, 2020), at <https://www.cdc.gov/coro-navirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

¹⁴ Cnn.com/2020/04/02/health/aerosol-coronavirus-spread-white-house-letter/index.html

¹⁵ Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020”, Emerging Infectious Diseases, 3/12/20, Volume 26, Number 6-June 2020, CDC (March 15, 2020), at https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

his current incarceration he spent over a year under the supervision of the Pretrial Services Department without incident.

We respectfully submit that the totality of these circumstances reflect Mr. Scparta's great level of respect and responsibility which militates in favor of the requested housing adjustment. Indeed, Mr. Scparta is willing to implement any additional measures deemed necessary to reassure the Bureau of Prisons of his whereabouts and compliance with the remainder of his sentence including wearing an ankle monitor at all times.

We believe that the requested relief represents an appropriate and humane approach to dealing with a pandemic and national emergency of this magnitude. In the absence of same, Mr. Scparta's remaining eight months of BOP custody – which would have necessarily included residency in a halfway house as well as a period home confinement – could potentially serve as death sentence given the existence of his chronic health ailment.

Thank you for your time and consideration of this matter.

Respectfully Submitted,
Joseph Mure, Jr.
Joseph Mure, Jr., Esq.



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04/06/2020

To Whom It May Concern:

This letter is written at the request and with the permission of the patient, Gerard Scparta [REDACTED]. He is currently under my primary medical care. Given recent concerns with COVID-19 pandemic and due to his hypertension and other medical conditions, patient is at high risk for COVID.

If you require additional information please contact the office.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura A. Nicoli", written over a horizontal line.

Laura A. Nicoli MD